#### STATE BAR COURT OF CALIFORNIA

#### **HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case Nos.: <b>12-O-12667-RAH</b>
	)	(12-O-14613; 12-O-16925
GARY DAVID TRACY,	)	12-O-17337; 12-O-17375
	)	12-O-17505; 12-O-17821
Member No. 167212,	)	<b>12-O-17932</b> )
	)	
A Member of the State Bar.	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND INACTIVE
	)	ENROLLMENT ORDER

# Introduction<sup>1</sup>

This matter concerns 24 client matters and 165 counts, all of which arose from respondent's affiliation with a group of non-lawyers performing loan modifications. Due to congestion on the court's calendar, and the complexities inherent in trying such a large matter in a single trial, on August 30, 2013, the court ordered that the matters to be tried would be separated into three groups. This order memorialized the court's oral order made at the August 20, 2013 status conference, which was further clarified at a status conference on August 29, 2013.

The State Bar chose the first eight cases to be tried and timely notified respondent of its choices. These cases were tried on November 13, 18, 19, 22, 25, 26, and 27, 2013; December 2 and 5, 2013 and January 14 and 28, 2014. Group One involved the following cases:

<sup>&</sup>lt;sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

12-O-14613, 12-O-12667, 12-O-16925, 12-O-17337, 12-O-17375, 12-O-17505, 12-O-17821, and 12-O-17932.

After the conclusion of the culpability phase of the trial of the Group One cases, the court made a tentative finding that respondent was culpable. Both parties then presented evidence of aggravation and mitigation, arising out of both the general facts common in all cases, and the specific facts of the individual cases in Group One.<sup>2</sup>

As is set forth in more detail below, after hearing the above eight matters, as well as evidence of the manner in which respondent conducted his practice, and having considered the evidence presented in aggravation and mitigation, the court has concluded that the appropriate level of discipline for these cases alone is disbarment. In reaching this conclusion, the court only considered aggravation arising from the Group One cases, since the remaining cases were not litigated.

To save the court's and the parties' resources, it is not necessary to continue with the hearing on the remaining cases. Consequently, on August 19, 2014, this court ordered that the remaining cases be severed from the current proceeding on the court's own motion. These cases will be abated until the effective date of the Supreme Court's disciplinary order in this matter. It was further ordered that, if the Supreme Court accepts this disbarment recommendation, then the abated cases would be dismissed without prejudice on the effective date of the Supreme Court's disciplinary order without further notice or action by this court. Thereafter, the complaining witnesses of the litigated and the dismissed cases may apply to the Client Security Fund for a determination as to any restitution that may be due.

#### **Significant Procedural History**

The superior court assumed jurisdiction over respondent's practice.

<sup>&</sup>lt;sup>2</sup> In this decision, the court only considered evidence of aggravating factors that related to the cases tried in Group One and not as to any of the remaining untried matters.

On September 27, 2012, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed an ex parte [Proposed] Order to Show Cause and Interim Orders Assuming Jurisdiction Over the Law Practice of Gary David Tracy. (In the Matter of Gary David Tracy, etc., et al., San Bernardino County Superior Court case no. CIVDS 1210109.) This action was filed pursuant to Business and Professions Code section 6190, et seq. The Hon. Brian S. McCarville signed the order, setting opposition and reply dates as October 9 and 15, 2012, respectively. The hearing occurred on October 30, 2012, and Judge McCarville filed a Permanent Order to Assume Jurisdiction Over the Law Practice of Gary David Tracy dba Realty Attorney Group, APC and dba Realty Group & Consulting, LLC. Thereafter, all of respondent's client files and records, and computer data, were seized, all bank accounts belonging to respondent and his law office were frozen, and other actions were ordered to be taken.

### The State Bar filed an application for involuntary inactive enrollment.

In the State Bar Court, the State Bar did <u>not</u> file a motion under section 6007, subdivision (b)(2), which provides as follows:

- (b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:
  - (2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

Instead, on November 13, 2012, the State Bar filed an Application for Involuntary Inactive Enrollment, pursuant to section 6007, subdivision (c)(2). On November 27, 2012, respondent filed his verified response in this matter.

The court filed an Order to Show Cause (OSC) as to why the matter should not be handled using the summary procedures set forth in section 6007, subdivision (b)(2). On December 7, 2012, the State Bar filed a motion for involuntary inactive enrollment pursuant to

section 6007, subdivision (b)(2) and, thereafter, the court enrolled respondent inactive. (*In the Matter of Gary David Tracy*, State Bar Court case no. 12-TR-17924.)

### Original proceeding filed in State Bar Court.

On July 15, 2013, a notice of disciplinary charges (NDC) was filed in this matter. Trial commenced on November 13, 2013. Senior Trial Counsel Mia Ellis and Deputy Trial Counsel Lara Bairamian represented the State Bar. Jeffrey S. Benice represented the respondent. After conclusion of the trial in the Group One cases, the matter was not submitted for decision, since not all of the client matters were concluded. In light of the fact that the court is prepared to issue final findings of fact, conclusions of law and a disbarment discipline recommendation in this decision, by separate order filed prior to the filing of this decision, this court severed, and will abate the cases not in Group One. In the event the Supreme Court accepts this disbarment recommendation, the abated cases will be dismissed without prejudice, allowing the complaining witnesses of both the Group One cases and the dismissed cases to apply to the Client Security Fund for a determination as to any restitution that may be due.

## **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 14, 1993 and Case No. 12-O-14613 – General Matters; Bell, Sullivan, and Other Bankruptcy Matters-Counts One through Nine; - Bankruptcy Matters, Counts Ten through Twelve

The following findings are based upon the evidence presented at the trial of the Group One cases, and in particular, case no. 12-O-14613. Although there were other cases in the NDC, the court did not consider any evidence from those cases.

On May 1, 2010, non-attorney Mike Denno aka Maik Georges Denno and another non-attorney formed Realty Group & Consulting, LLC (Realty Group). Denno was the President and

Chief Financial Officer of Realty Group.<sup>3</sup> At all relevant times herein, Realty Group was located at 3270 Inland Empire Boulevard, Suite 100, Ontario, California 91764 (Ontario office).

# The business was owned and managed by Denno, not respondent.

In August 2011, respondent was looking for work, so he responded to an advertisement Denno placed on Craigslist. He met with Denno, and thereafter, Denno hired him to represent clients of Realty Group. While respondent claims that he initially thought he was hired simply as "house counsel" for the company, he almost immediately became, or should have become, aware that the company defined his role as that of a lawyer in a law firm. As such, beginning in August 2011, respondent formed a partnership with non-attorney Denno wherein he engaged in the practice of law. The practice, which was conducted at the Ontario office, was, in effect, a continuation of Denno's existing business at that same location. Denno or his company owned all of the company's furniture and fixtures. All of the company's employees were supervised by Denno and others on his non-attorney staff.

In January 2012, respondent formed Realty Attorney Group, APC (RAG). RAG was located at the same Ontario address as Realty Group. Ostensibly, this act of creating RAG was to clarify that respondent was in charge as the attorney in the firm. On January 17, 2012, respondent filed or caused to be filed articles of incorporation for RAG with the California Secretary of State. The mailing address identified in the filing was the address for Realty Group. The building directory at the Ontario office read, "Realty Group & Consulting," Denno's company. The "independent" nature of RAG was further compromised when, on April 19, 2012, respondent filed a statement with the County of San Bernardino listing RAG as doing business as Realty Group & Consulting, LLC, the company owned by Denno After creating RAG,

<sup>&</sup>lt;sup>3</sup> Denno was a convicted felon, apparently for grand theft. Denno acknowledged in a declaration admitted into evidence that he had a 2002 felony, but had "fully satisfied [his] sentence and parole obligations." He then noted that he had "engaged in no improper acts."

respondent abdicated all control of Realty Group and RAG to Denno and other non-attorneys.

At trial in this matter, respondent frequently reflected this lack of control when questioned by the State Bar. He was unable to clarify even the basic administrative structure of the "firm," and frequently did not know what his staff was doing or why they were doing it.

Later, in May 2012, respondent would testify that, although he was not sure, he thought Realty Group was owned "50-50" between himself and Denno. He later clarified that testimony by stating that he misspoke, and really meant to refer to RAG. Regardless of whether he meant Realty Group or RAG, these two companies were the alter ego of each other and acted as the same entity: in essence, the evidence clearly revealed a "law firm" operated and managed by non-attorneys.

Respondent shared legal fees with non-attorneys, including Denno. Denno paid respondent a salary of approximately \$5,500 per month paid from the fees clients paid to Realty Group. In actual fact, in exchange for compensation in the form of these monthly payments from Denno, respondent lent his name and law license to be used by Denno and other non-attorneys, Realty Group, and RAG. He did so to give the public the appearance that Realty Group and/or RAG were a law office operated and managed by respondent, when that was not the case. As noted above, respondent had little, if any, control over the operation of Realty Group or RAG. Denno and his non-attorney associates managed these entities entirely. Further, after respondent became aware of this relationship, instead of objecting or changing the administrative and managerial arrangements, he passively adopted this role in the organization, and knowingly allowed non-attorneys to run the law practice.<sup>4</sup>

<sup>&</sup>lt;sup>4</sup> As an example of his absent managerial role, when asked in July 2012 by a US Trustee during a bankruptcy court Order to Show Cause hearing what his office telephone number was, respondent could not recall it. He stated: "I don't really always remember the number to the office. I know how to get there, but I don't remember the number."

Despite being the "lead attorney" in this "law firm," respondent had almost no control over any of the bank accounts. Realty Group or RAG maintained four accounts at JP Morgan Chase (Chase), account numbers: XXXXX8191; XXXXX1018; and XXXXX1743; and XXXXX4466, which is a client trust account (CTA). Denno was the only signatory on all of the Chase accounts. Realty Group or RAG also maintained an account at Bank of America, account number XXXXX1734. Denno was one of the signatories on the Bank of America account. Client funds were deposited into the Chase accounts and refunds, when made, were drawn from the Chase accounts. Denno was the person at the company that signed and delivered refund checks to clients.

In short, respondent was a figurehead only and had "sold" his license to practice law to a non-attorney in exchange for monthly payments of salary. He was hired to give the company the necessary face validity by purportedly having an attorney at its helm. But Realty Group and RAG were one and the same company, run by Denno, with the acquiescence of respondent.

### The business model and office policies.

Realty Group's and RAG's purported business purpose was to file bankruptcies and/or pursue litigation against lenders in order to forestall or reverse foreclosures, and to prevent evictions. In reality, the primary purpose of the bankruptcies or litigation was to secure a loan modification after obtaining advance fees.<sup>5</sup>

The company had various departments, including Intake, Sales and Legal. Respondent was the only attorney in the company. The company marketed itself by directly calling or sending flyers or mailers to prospective clients who were in foreclosure, on the verge of losing their homes, or had recently lost their homes to foreclosure. These mailers were prepared by non-attorneys and not reviewed by respondent. In fact, respondent did not recognize the mailers

<sup>&</sup>lt;sup>5</sup> Civil Code section 2944.7 precludes any person from receiving advanced fees for negotiating, arranging or otherwise performing a loan modification.

used by the company. Generally, the mailer did not reference Realty Group or respondent. The mailer often included a Fair Housing opportunity symbol and began with "Urgent!" The mailer informed the prospective client that their home was scheduled to be sold at a foreclosure sale. The mailer further indicated that the prospective client could obtain a "reduction in your monthly rate, payments and principal balance." The mailer often included a chart at the bottom of the page which, without referencing anything about the prospective client's financial situation, informed the prospective clients that they could get a reduction in their mortgage interest rate. The mailer described various services offered and also notified recipients that their mortgage may be eligible for restructuring, even if they were denied a loan modification, their home recently sold, or they had a foreclosure sale date pending. The mailer also indicated that loan modification rates were as low as two percent. The presentation and arrangement of the mailer was intended to confuse, deceive, or mislead the public. As is clear from the face of these mailers, their purpose was to solicit clients seeking to modify their loans. At no time prior to receiving the mailer had the potential clients requested correspondence from respondent.

The mailer did not bear the words "Advertisement," "Newsletter," or words of similar import in 12-point type on the first page. The mailer did not reference Realty Group, RAG or respondent. The mailer contained the Fair Housing opportunity symbol, which suggested that the mailer was either authorized or endorsed by a governmental agency and its commitment to fair housing. In fact, the mailer was not authorized or endorsed by any governmental agency. The mailers also indicated specific personal information regarding the status of the recipients' home loans and, in some instances, the amount of their loans.

When prospective clients called, they were not directed to respondent, but rather, to nonattorneys, who were provided with scripts to use in selling services to them. The staff was also instructed to refer to checklists for certain common problems. The staff would schedule an appointment for the client. When the client arrived at the Ontario office, he or she would meet with a non-attorney. This non-attorney performed many functions, including offering legal advice. The non-attorney staff was not directly supervised by respondent, or any other attorney.

Realty Group had office guidelines for the Intake Department which set forth the office hours, job duties, and "scripts" for staff. The non-attorney staff, also known as "agents," solicited clients using the scripts. The agents were required to be versed in the "products extended by the office: bankruptcy Chapters 7 & 13, credit restoration, litigation, forensic auditing, short sales, and extended stay." The agents explained to the prospective clients the details of the services offered by Realty Group.

After receiving the client from the Intake and Sales departments, a non-attorney staff member was allowed to determine whether to take the case and the proper advance fee to charge. On occasion, if respondent was in the office, he was called over to the staff member's office to introduce him to the new client. These encounters seldom occurred, but if they did, they rarely lasted more than a few seconds. Respondent did not review the documents being provided to the client by the staff member, nor did he perform any legal function, give any legal advice, or evaluate the proper fee to charge. Therefore, respondent had no specific knowledge about the clients' identities, cases, or causes; how much each client was being charged for legal services; or what legal services the "firm" had agreed to provide. When respondent met with the clients, the sole purpose of such brief encounters was to falsely reassure the clients that an attorney was actively working on their matter, when that, in fact, was not the case.

Respondent often signed several blank retainer agreements so that the client could be retained even when he was not present in the office. Respondent's employees generally used two types of retainer packets, each of which contained various documents, including the following: 1) summons/complaint/service of process, related motions, court appearances,

counseling, referral to debt consolidation specialist, non-attorney represented Emergency

Petition for Bankruptcy Chapter 13 or non-attorney represented Emergency Petition for

Bankruptcy Chapter 7, referral to credit restoration specialist, and a forensic audit (retainer agreement one); and 2) rescission of sale/UD, file rescission of sale, summons/complaint/service of process, answer to UD, related motions, counseling, referral to debt consolidation specialist, and referral to credit restoration specialist (retainer agreement two).

After the agent determined which retainer agreement was appropriate, the client would sign the retainer agreement. Thereafter, the client would meet with a paralegal, who would provide the client with the "appropriate" documents, whether that be a bankruptcy petition or a complaint to be filed with a court. Fees were obtained from the client in advance of performing the services to be provided. These cases were sometimes characterized as bankruptcies or lawsuits. But their goal was clearly a loan modification, and they violated California Civil Code section 2944.7(a).

In some instances, respondent and/or Realty Group non-attorney staff also had clients sign limited power of attorney forms for Realty Group to act as "attorney-in-fact" to conduct and prosecute the litigation concerning the clients' promissory notes and deeds of trust. The power of attorney forms stated that respondent would transact all matters for the subject property, including but not limited to filing papers with the court, appearing in court for the client, and negotiating with opposing counsel. Again, these powers of attorney were obtained from the client without the active assistance of an attorney. The language in the retainer agreements and power of attorney forms created a false impression that an attorney would be performing work on the client's behalf and concealed Realty Group's and/or RAG's nature as a loan modification company operated by non-attorneys.

#### Conclusions

# Count One - (Rule 1-310 [Forming a Partnership with a Non-Lawyer])

Rule 1-310 provides that an attorney must not form a partnership with a non-lawyer if any of the activities of the partnership consists of the practice of law.

By forming a partnership with Denno and Realty Group non-lawyers, where the activities of the partnership consisted of the practice of law, such as meeting with clients, giving them legal advice, and determining and charging the legal fees for the services to be performed purportedly by respondent, all without his involvement; respondent formed a partnership with a non-lawyer and that partnership engaged in the practice of law in willful violation of rule 1-310.

## Count Two – Section 6105 [Lending name to a Non-Lawyer]

Section 6105 provides that an attorney must not lend his name to be used as attorney by another person who is not an attorney.

Respondent lent his name to be used as attorney by a non-attorney in willful violation of section 6105, in exchange for compensation in the form of monthly payments from Denno, by the following: (1) entering into an agreement with Denno to be the attorney for Realty Group; (2) creating RAG; (3) abdicating all control of Realty Group and RAG to Denno and his non-attorney staff; and (4) allowing Denno and the other non-attorneys to operate Realty Group and RAG as a law firm using his name as the attorney for the firm and not supervising the activities of the practice of law in Realty Group and RAG.

### Count Three - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law.

Respondent aided a person or entity in the unauthorized practice of law in willful violation of rule 1-300(A), by: (1) abdicating all control over Realty Group and RAG to Denno

and his non-attorney staff; (2) allowing Denno and other non-attorneys to operate Realty Group and RAG as a law firm; (3) not supervising Realty Group's and RAG's practice of law; (4) creating an environment in which clients could employ respondent without his specific knowledge of the clients' identities, cases or causes without any attorney supervision; and (5) allowing non-attorneys to enter into agreements with clients, provide legal advice, and set legal fees.

### Count Four - (Rule 1-320(A) [Sharing Fees with Non-Lawyers])

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer.

Respondent accepted a monthly salary of \$5,500 from Denno, a non-lawyer, obtained from the practice of law and the legal fees that clients paid to Realty Group. As such, respondent willfully violated rule 1-320(A) by sharing legal fees with Denno.

## Count Five - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Respondent committed acts of moral turpitude, dishonesty or corruption in willful violation of section 6106 by: (1) allowing Denno and other non-attorneys to operate Realty Group and RAG; (2) creating or allowing Denno and other non-attorneys to create a false impression to clients and the public that respondent was in charge and operated Realty Group or RAG and that an attorney or someone under an attorney's supervision would be performing clients' work; and (3) misleading or allowing clients to be misled that he was in charge and operated Realty Group or RAG, when, in reality, it was Denno who was in charge and operated Realty Group or RAG.

### Count Six - (§ 6106 [Moral Turpitude])

OCTC has alleged in Count Six that respondent also failed to perform any work or repeatedly performed work of no substance for his clients. For the factual support of that allegation, OCTC incorporates certain allegations and counts preceding Count Six. However, those paragraphs and counts allege insufficient facts to effectively put respondent on notice as to the specific actions claimed to be inappropriate. There are counts alleging similar misconduct with respect to specific clients later in the NDC. Those charges will be dealt with by this court in the discussion of those cases. As such, since there are insufficient facts to find culpability for Count Six, it is dismissed with prejudice.

## Count Seven – 1-400 [Improper advertising and solicitation]

A lawyer may not advertise or solicit clients without complying with rule 1-400.

Respondent delivered, or caused to be delivered to prospective clients, a mailer seeking professional employment, which was transmitted by mail or equivalent means which did not bear the required word "Advertisement," "Newsletter" or words of similar import, and which contained matter which was false, deceptive, or which tended to confuse, deceive or mislead the public, including, for example, the use of the Fair Housing opportunity symbol

## **Facts – Bankruptcy Matters**

## **Bell Matter, Counts Eight and Nine**

Laura S. Bell filed two bankruptcy petitions in pro per in the United States Bankruptcy Court, Central District of California in Riverside. Respondent, or his staff, filed a third Chapter 7 bankruptcy petition on her behalf. (*In re Laura S. Bell*, United States Bankruptcy Court, Central District of California (Riverside) case no. 6:11-bk-46261-MJ (the Bell bankruptcy case).) The petition was purportedly signed by attorney Gregory Alan Baker, who was represented to be an attorney at Realty Law Group in Ontario, California. In fact, Baker was not Bell's attorney.

A substitution of attorney form was filed on December 14, 2011, purporting to substitute Baker out of the case and respondent in as the "new" attorney. Baker, however, did not sign the substitution of attorney. Instead, his signature was forged by either respondent or a member of his staff. Respondent claimed to have learned of the forgery on January 3, 2012 and also claimed to have reprimanded Marla Perez, the non-attorney who he thought forged the document. However, Perez was not terminated as a result of this conduct. She continued to be respondent's senior paralegal and his "right hand gal," as she was described by respondent.

The bankruptcy court issued an order to show cause (OSC) on January 24, 2012 as to why respondent should not be sanctioned for filing a false document (the substitution of attorney and possibly earlier filings). The court set a hearing on the OSC for February 21, 2102, ordering respondent to appear. On February 21, 2012, the court held the hearing on the OSC, but respondent did not appear or oppose the OSC. The court found that the facts set forth in the OSC were true. The court further found that the facts showed an egregious disregard for proper procedure and the ethical obligations of a licensed attorney in the State of California. The court served respondent with an order sanctioning him \$2,000, payable in 15 days. Respondent's office received this order, but did not timely pay the sanction, appear, or file any papers with respect to the sanction order.

After the deadline for the payment of the sanction, on March 16, 2012, Denno issued a check for \$2,000. Despite being the sole attorney at RAG and Realty Group, respondent claimed he had not learned of the sanction until June 30, 2012. The court finds that respondent did not know about the sanction order due to his lack of involvement in the day-to-day operations of the "firm." Respondent did not report the February 21, 2012 sanction to the State Bar at any time.

### Count Eight -(§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery.

Respondent willfully violated section 6068, subdivision (o)(3) by never notifying the State Bar that judicial sanctions had been imposed against him on February 21, 2012.

### Count Nine - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

Respondent willfully violated section 6103 by not appearing at the February 21, 2012 OSC hearing. However, there is not clear and convincing evidence that respondent willfully violated section 6103 by not timely paying the court-ordered sanctions because he credibly testified that he did not know about the sanctions order until June 30, 2012, after the deadline for payment.<sup>6</sup>

## Sullivan and Other Bankruptcy Matters, Counts Ten through Twelve.

Respondent had other bankruptcy cases in both the Santa Ana and the Riverside bankruptcy courts.

#### The Santa Ana Cases.

Kathleen Sullivan was respondent's client. On March 26, 2012, respondent filed or caused to be filed a bankruptcy petition on her behalf indicating that she was representing

<sup>&</sup>lt;sup>6</sup> This is so, even though the reason respondent did not know about the sanctions order is because he had abdicated his management responsibility of the "firm" to Denno and other non-attorneys and was uninvolved in its day-to-day operations.

herself. (*In re Kathleen M. Sullivan*, U.S. Bankruptcy Court (Santa Ana) case number 8:12-bk-13731-CB.) In fact, Sullivan was not representing herself. Respondent was her attorney and respondent's firm prepared the filing. On April 5, 2012, respondent filed or caused to be filed a debtor's motion for an extension of time to file schedules for Sullivan requesting more time for her to retain an attorney. Sullivan's motion was intended to mislead the bankruptcy court into thinking she had not yet retained respondent. The motion was denied on April 9, 2012. The bankruptcy petition was dismissed on May 2, 2012.

The bankruptcy court in Santa Ana ordered respondent to appear on several occasions - May 30, 2012, June 20, 2012, and July 17, 2012 - regarding the Sullivan, Bell, and other matters. During his testimony, respondent falsely stated the character and procedures of his practice, to wit, that he met with all of the clients and reviewed all bankruptcy petitions before they were filed. Respondent made these statements to the court with full knowledge that they were false. Respondent also falsely testified that he filed this and other so-called "face sheet" bankruptcies<sup>7</sup> for proper reasons other than simply to obtain an automatic stay of foreclosure proceedings. These statements were made with the intent of misleading the court into believing that respondent was actively involved in a legitimate bankruptcy practice, and that he had not improperly delegated the bankruptcy work to non-lawyers.

During the proceedings on July 17, 2012, respondent was questioned extensively by Judge Deborah Saltzman regarding his practices in several cases. Respondent acknowledged

<sup>&</sup>lt;sup>7</sup> A "face-sheet" bankruptcy was described at trial as the filing of only minimal documentation necessary to get the case on file, with further documentation to follow. The effect of such a filing is to impose an automatic stay on foreclosure or other pending actions under 11 U.S.C. section 362.

<sup>&</sup>lt;sup>8</sup> According to the credible and unrebutted testimony of the State Bar's bankruptcy expert, Helen Frazer, bankruptcy law prohibits an attorney from filing a bad faith skeletal petition without a genuine intent to obtain a discharge for his client or for an improper purpose.

that the firm frequently assisted clients by preparing their initial petitions to be filed in proper. In such cases, respondent would not identify his firm as having prepared the petition, nor would they complete a Disclosure of Compensation of Attorney for Debtor form and file it with the petition. Respondent instructed non-attorney staff at Realty Group or RAG to prepare motions to extend the deadline in these cases (motions to extend) to be filed with the bankruptcy court. These motions to extend stated that the debtors needed time to obtain an attorney to properly complete the bankruptcy petitions. In fact, the clients had already retained respondent, Realty Group or RAG. The motions to extend were false and intended to mislead the bankruptcy court. Respondent also knew that the bankruptcy petitions and motions to extend were filed to delay or stay the foreclosure of his clients' homes, rather than with a genuine intent to obtain a discharge. At trial on December 5, 2013, the parties stipulated that, in all eight client matters covering the nine bankruptcy filings in Santa Ana, none of them has respondent's signature; and all have an extension request based on the need to obtain counsel. The parties also stipulated that respondent's office prepared all of the "face sheet" filings and motions to extend, and on none is his firm identified on the bankruptcy petition. Further, respondent testified in the bankruptcy proceeding in Santa Ana that the bankruptcies were filed for the purpose of stopping the sale of the homes, and he never testified that there were other proper reasons motivating the filings.

On May 17, 2012, the bankruptcy court in Santa Ana filed and served an OSC regarding whether respondent failed to disclose preparation of the bankruptcy petition in the Sullivan case. In the OSC, the court indicated that the new bankruptcy petition submitted for filing on May 9,

<sup>&</sup>lt;sup>9</sup> Title 11 U.S.C. section 329 regulates debtors' transactions with attorneys, including disclosure of compensation. Pursuant to Title 11 U.S.C. sections 329 and 2016(b), an attorney must file a Disclosure of Compensation of Attorney for Debtor form with the Bankruptcy Court if the attorney is filing a petition on behalf of a debtor. Pursuant to local rule 2090-1 of the U.S. Bankruptcy Court for the Central District of California, if an attorney's representation is limited, the attorney must file a Declaration Re: Limited Scope of Appearance along with the debtor's bankruptcy petition.

2012 was deficient, and that it stated that Sullivan was not represented by an attorney, and that she had no prior bankruptcy filings. In the OSC, the court ordered respondent to appear personally at the OSC hearing on May 30, 2012. The OSC was properly served on respondent, who received it.

Respondent appeared at the May 30, 2012, OSC hearing in the Sullivan bankruptcy. As noted above, during his testimony at the OSC, he identified Realty Group as a law firm and stated that he and Denno essentially owned it "50-50." (Later, at trial, he clarified that he meant RAG when he stated his ownership was "50-50.") Respondent further testified at the OSC that he met with all of his clients and reviewed all of the bankruptcy petitions before they were filed, although he knew at the time that those representations were false. The bankruptcy court judge asked respondent to provide the U.S. Trustee's counsel with a list of the litigation and bankruptcy files that respondent handled from January to May 2012. The May 30, 2012 OSC was continued to June 20, 2012.

Respondent appeared at the continued OSC hearing in the Sullivan bankruptcy. On that date, respondent testified under oath that Denno was the financial manager of RAG. Respondent also testified that he (respondent) was the 100 percent owner of RAG. Respondent falsely testified again that he personally met with his clients before he filed bankruptcy petitions on their behalf.

On July 12, 2012, the bankruptcy court in Santa Ana, issued an order in the Sullivan case finding that, based upon respondent's testimony, all pleadings and papers on file in the matter, and respondent's agreement with the U.S. Trustee, respondent was to: (1) reimburse the U.S. Trustee \$10,000.00 for fees expended in connection with the investigation of the matter no later than 30 days from the entry date of the order; (2) identify RAG on all future bankruptcy filings; (3) file all bankruptcy documents electronically; and (4) provide the U.S. Trustee with a list of

all bankruptcy cases filed by respondent from August 2011 through December 31, 2011.

Respondent received the order through counsel.

#### The Riverside Cases.

In May and June 2012, the U.S. Bankruptcy Court for the Central District of California in Riverside, issued 18 OSCs in 18 separate bankruptcy cases regarding why respondent should not disgorge fees and/or be fined for violation of 11 U.S.C. section 110. Specifically, the OSCs were to address 11 U.S.C. sections 110 (b), (c), (d), (e), (f), (g), (h), (i), and any applicable state law, including, but not limited to, California Business and Professions Code sections 6400 et seq. and 6450 et seq. <sup>10</sup>

These OSCs were set for hearing on July 27, 2012. Respondent received the OSCs and filed responses. Respondent testified at the OSC hearing that he filed or caused to be filed bankruptcy petitions to stop the foreclosure process or the sale of a client's home. The bankruptcy court continued the hearing on the OSCs to September 28, 2012.

On August 14, 2012, the court issued another 18 OSCs in the Riverside cases regarding why respondent should not disgorge fees for violation of 11 U.S.C. section 329 and Federal Rule of Bankruptcy Procedure 2017 and as to whether the court should impose sanctions pursuant to Federal Rule of Bankruptcy Procedure 9011 or take other available disciplinary action. The hearing on all 18 OSCs was set for September 28, 2012, but it was continued. Respondent received the OSCs and filed responses.

<sup>&</sup>lt;sup>10</sup> The 18 bankruptcy cases included: Donovan Witchell (case number 6:11-48407), Mack Miller (case number 6:12-11432), Charles Schaben (case number 6:12-11328), Lynn Barr (case number 6:12-11255), Claudio Saldana (case number 6:12-11192), Estanislao Hernandez (case number 6:12-10072), Suncho Piedra (case number 6:11-48743), Christopher J. Spek (case number 6:11-48410), Wayne Bradford and Robin Bradford (case number 6:11-48274), Evangeline Ferido Palomar (case number 6:11-47285), Oscar Diaz (case number 6:11-47173), Jose A. Serrano (case number 6:11-46214), Suncho Piedra (case number 6:11-46004), Bertha Gasso (case number 6:11-45991), Virginia Alvarez (case number 6:11-45935), Domingo Aguirre (case number 6:11-45517), Luisa Fua (case number 6:11-45218), and Jose L. Rodriguez (case number 6:11-44627) (Riverside cases).

In a majority of the 18 Riverside cases, respondent did not file a Disclosure of Compensation form with each petition or disclose that he represented the debtor, yet he had collected compensation.

On April 29, 2013, respondent stipulated to resolve disputes with the U.S. Trustee concerning the pending August 14, 2012 OSCs. In the stipulation, he admitted and acknowledged that he represented the debtors in all of the Riverside cases and provided legal services. In filing each and every one of the subject cases, respondent did not identify his involvement and/or compensation as required by the Federal Rules of Bankruptcy Procedure and other applicable law. All of the Riverside cases were filed solely to forestall foreclosure and/or UD proceedings. Subject to court approval, respondent stipulated that he would disgorge fees to the debtors, totaling \$8,670, and reimburse the U.S. Trustee for expenses incurred in the amount of \$2,500 to be paid within 90 days from about May 9, 2013, the date the bankruptcy court approved the stipulation.

Respondent filed or caused to be filed bankruptcy petitions without a genuine intent to obtain discharges for his clients. He abused the bankruptcy process by causing petitions to be filed for the sole purpose of stopping the foreclosure process or the sale of clients' homes and without the intent to obtain discharges for his clients and for improper purposes.

#### *Count 10 - (§ 6106 [Moral Turpitude])*

Respondent willfully violated section 6106 by: (1) making material misrepresentations by testifying under penalty of perjury on May 30 and June 20, 2012, at the bankruptcy court in Santa Ana that he: met with all of his clients; reviewed the bankruptcy petitions before they were filed; and that he did not know why the motions to extend were filed to allow the debtor to obtain an attorney, when respondent knew that his representations were false; and (2) by forging

or allowing non-attorney employees of Realty Group or RAG to forge Baker's name to the substitution of attorney form in the Bell matter without Baker's knowledge or consent.

# Count 11 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

Respondent willfully violated section 6068, subdivision (c) by filing or causing to be filed bankruptcy petitions for the sole purpose of stopping the foreclosure process or the sale of a client's home and without the intent to obtain a discharge for his client.

# Count 12 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

Respondent employed means which were inconsistent with the truth and sought to mislead the bankruptcy court in willful violation of section 6068, subdivision (d) by: (1) filing or causing to be filed bankruptcy petitions on behalf of his clients indicating that the clients were debtors in pro per when actually they had retained respondent to represent them; (2) filing bankruptcy petitions on behalf of his clients without also filing a Disclosure of Compensation of Attorney form or otherwise identifying that he was the preparer of the petition; (3) filing or causing to be filed numerous motions for extensions of time to retain an attorney on behalf of clients who had already retained respondent; (4) filing or allowing non-attorney employees of Realty Group or RAG to file the Bell petition indicating that Baker represented Bell when he did not; and (5) filing or allowing non-attorney employees of Realty Group or RAG to file the

substitution of attorney form in the Bell matter under the guise that it was signed by Baker when respondent or an employee in fact signed Baker's name to it.

## Case No. 12-O-12667 - The Aguiniga Matter

#### **Facts**

Carlos and Diega Aguiniga were having difficulties paying their mortgage because their income had recently gone down due to a drop off in Carlos' business. The Aguinigas had attempted to obtain a loan modification in the past, but were unsuccessful. They had not paid any mortgage payments for approximately one year. Their house was scheduled for a trustee's sale, and they would, thereafter, face eviction.

They received a mailer from Realty Group. In November 2011, they contacted respondent's firm to represent them in a loan modification. On November 16, 2011, they signed a retainer agreement calling for a retainer payment of \$1,000 per month. They were told that they should consider this as simply a rental payment while the process of modifying their loan was occurring. The retainer agreement also stated that if "we get the property resended (sic) then there will be an additional retainer of \$2,500.00..." The retainer also contained language disclaiming any guarantee regarding the outcome of Realty Group's efforts. After they signed the retainer agreement, it was taken to respondent for his signature. He signed it and brought it back to the office where the parties were meeting. He briefly spoke with the Aguinigas for approximately a minute, to say "hello." That was the only time they met or spoke with respondent.

The Aguinigas met with Tahmra Reid, a non-lawyer, who informed them what particular legal services they needed. Diega Aguinigas only spoke Spanish, so Reid reviewed the agreement with her in Spanish. Reid told them that they would need to defend an unlawful

detainer (UD) proceeding and that the firm "would recover their property." This advice constituted the practice of law

The Aguinigas learned that their property had been sold at a trustee's sale, and attempted to contact respondent's office by email on December 2 and December 7, 2011, to inform the office of that fact. Respondent's office did not respond to either email.

On December 15, 2011, the lender that took back the property at the trustee's sale filed a UD proceeding. The Aguinigas copied all the documents they had received, including the UD complaint. They dropped all of them off at respondent's office with Perez in the Legal department. Respondent or his office prepared and filed a verified answer to the UD complaint on December 22, 2011. The verified answer was purportedly signed by Diega, in pro per, but, in fact, someone in respondent's office had signed her name to the complaint, verified under penalty of perjury. Respondent filed or allowed non-attorney employees of Realty Group or RAG to file the answer to the UD action with the court under the guise that it was prepared and signed by Diega. Neither Diega nor Carlos authorized anyone to sign Diega's name on her behalf. They also were unaware that respondent's firm was not going to represent her as her attorney of record.

A notice of trial was served on respondent's office. Respondent's staff told Diega that she need not appear, since respondent's office would appear on their behalf. No one appeared at trial, and the court entered Diega's default. Respondent knew or should have known that trial was scheduled in the UD.

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On January 12, 2012, without informing the Aguinigas, respondent's office filed a lawsuit against Wells Fargo Bank, the Aguinigas' lender. (*Aguiniga v. Wells Fargo Bank National* (sic), et al., Riverside County Superior Court, case no. RIC 1200619.)<sup>11</sup>

On March 5, 2012, Carlos sent Perez an email informing her that the Sheriff had come and ordered that they vacate the property. The next day, Carlos and Diega went to respondent's office and Perez told them that there was nothing respondent's firm could do. They vacated their home on March 10, 2012 at 10:00 p.m.

On March 16, 2012, the Aguinigas sent respondent a letter terminating respondent's services and demanding a refund of the \$4,000 they had paid to that date. Respondent's office did not respond to the letter. Respondent's office did not file a substitution of attorney in *Aguiniga v. Wells Fargo*.

On May 2, 2012, Wells Fargo filed and served a demurrer on respondent and he received it. Neither respondent nor his firm appeared at the hearing on the demurrer. Carlos and Diega were unaware that respondent's firm would not appear for the matter, so they also did not appear. The demurrer was sustained with 30 days' leave to amend. Apparently, no amended complaint was filed, and on September 19, 2012, the Riverside Superior Court granted a motion to dismiss the case with prejudice. Respondent's office did not inform the Aguinigas of the demurrer or of the result of the hearings.

Patrick Dunlevy competently and credibly testified as to the problems with respondent's complaint in *Aguiniga v. Wells Fargo*. He noted that there were statute of limitation problems on some of the counts, and the lawsuit failed to be accompanied by a filed and recorded lis pendens. In addition, he noted that the fraud counts seemed to be directed to the originator of the loan, but

<sup>&</sup>lt;sup>11</sup> A notice of removal was filed seeking to remove the case to federal court. It is unclear from the record the exact result of that proceeding, but eventually, the case was returned to Riverside County Superior Court for further proceedings.

the originator was not named or served as a defendant. Also, the quiet title count should have been directed to the current owner, FNMA, but FNMA was not a named defendant. In addition, slander of title was pled, but Civil Code section 2924d provided for qualified immunity unless malice was found. Malice was not properly pled. Finally, Mr. Dunlevy noted that the complaint alleged restitution of a voidable cognovit note, which is an origination claim, not a claim against Wells Fargo. Further, according to Mr. Dunlevy, courts have ruled that a note secured by a trust deed is not a cognovit note.

The January 12, 2012 lawsuit had little or no chance of success and contained entirely improper causes of action and inapplicable and meaningless boilerplate language. Upon the granting of the demurrer, Wells Fargo filed a motion to dismiss the lawsuit, which was granted. Respondent's office did not inform the Aguinigas of the dismissal of the lawsuit.

Respondent's office did not refund any fees nor did it prepare an accounting of the fees it received and the amount it had earned, if any. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for the Aguinigas, prior to demanding, charging, collecting or receiving any fees.

On September 27, 2012, when the San Bernardino Superior Court assumed jurisdiction over respondent's law practice, respondent's services in all respects were effectively terminated.

#### **Conclusions**

Count 13 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent did not supervise his non-attorney staff. He allowed them to give the Aguinigas legal advice and commit to represent them as clients without any input or legal advice from himself or any other attorney.

Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by: (1) not performing mortgage loan modification services or any legal services of value for the Aguinigas, (2) not meeting with the Aguinigas or providing any legal advice; (3) not supervising his non-attorney employees and allowing them to give the Aguinigas legal advice; and (4) not appearing at the UD trial.

# Count 14 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section 2944.7 is Subject to Discipline])

Civil Code section 2944.7(a) provides that it is unlawful for any person who arranges, attempts to arrange, negotiates, attempts to negotiate, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower to (1) charge, collect, demand, claim, or receive any compensation until after fully performing each and every service the person contracted to perform or represented that he/she would perform; (2) take any lien of any type on real or personal property, any wage assignment, or other security to secure the payment of compensation; or (3) for any purpose, take any power of attorney from the borrower.

By negotiating, arranging, or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee for the Aguinigas, and collecting \$4,000 in advanced fees prior to fully performing each and every service respondent had contracted to perform or represented that he would perform in violation of section 2944.7(a)(1) of the Civil Code, respondent willfully violated section 6106.3(a).

### Count 15 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent willfully violated rule 3-700(D)(2) by not refunding any portion of the \$4,000 in unearned advanced fees to the Aguiniguas after his employment was terminated.

# Count 16 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

By not providing the Aguinigas with an accounting of the \$4,000 in fees that they advanced to respondent, respondent did not render appropriate accounts to a client regarding all client funds coming into his possession in willful violation of rule 4-100(B)(3).

### Counts 17 and 18 - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not responding to Carlos' December 2 and 7, 2011 emails seeking information about the status of their case, respondent did not respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

By not informing the Aguinigas both about the filing of Wells Fargo's demurrer and motion to dismiss or the granting of the motion and dismissal of the case, and that respondent was not going to respond to the UD action as Diega's attorney of record and would instead list her as representing herself, respondent did not keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of section 6068, subdivision (m).

### Count 19-(Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's

rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(A)(2) and other applicable rules and laws.

Respondent did not take reasonable steps to avoid reasonably foreseeable prejudice to his client upon termination of his employment in willful violation of rule 3-700(A)(2) by not filing a substitution of attorney or taking any action to protect Diega's rights while he remained her attorney of record.

### *Count 20 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Diega's signature on the verified answer in the UD without her knowledge or consent, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

# Count 21 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

By filing or allowing non-attorney employees of Realty Group or RAG to file the answer to the UD action and sign Diega's name to it without indicating that someone else had signed it and by misrepresenting that Diega was in pro per even after the Aguinigas had retained respondent, Realty Group or RAG; respondent employed, for the purposes of maintaining the causes confided to him, means which were inconsistent with the truth and sought to mislead the judge or judicial officer by an artifice or false statement of fact or law.

# Case No. 12-O-16925 – The Aragon Matter

#### **Facts**

Maria Aragon owned property in Los Angeles since 2003. She was disabled and was having trouble making the mortgage payments. She lost her job in 2008, but continued making payments until 2011 when she could no longer do so. She had applied for a loan modification with her mortgage lender, and the application was "dual-tracked" with a pending foreclosure.

The trustee's sale was scheduled for May 23, 2012. Eventually, the bank denied her requested loan modification.

Aragon got a flier from Realty Group in the mail, so she contacted Reid at respondent's office. Reid told her that she had been a client herself and was able to save her home through the efforts of respondent's firm. Reid also informed her about the specific services she needed to solve her problem. In doing so, Reid gave Aragon legal advice.

After meeting with Reid, Aragon agreed to retain the firm on Friday, May 18, 2012. In the retainer agreement, there was a section which allowed respondent to file a "Non-attorney represented Emergency Petition for Bankruptcy Chapter 7" on her behalf. Aragon had been advised by an attorney that bankruptcy should be the last resort, so she crossed out that language, initialed her change, and told Reid that she did not want them to handle a bankruptcy.

She agreed to a payment schedule of \$1,250 payable immediately, \$1,250 in one month, and then \$850 per month thereafter. She gave them her debit card information for the first payment and authorized them to withdraw this amount from her checking account. Reid estimated it would take two to six months to accomplish the loan modification. She met respondent for one to two minutes after signing the retainer agreement. He gave Aragon no legal advice.

Aragon went home, but started having second thoughts about how legitimate Realty Group was. She went on-line that evening to learn more about the company, and came to the conclusion that they were "scamming" their clients. She decided that she did not want to retain the firm.

The next day, Saturday, May 19, 2012, she called Reid seven times, leaving at least five messages that she was terminating the firm. No one returned her call, so she contacted her bank and stopped payment on the initial charge.

Aragon called Reid again on the following Monday, but was transferred to an employee named Sonia. Sonia called her back on Tuesday, leaving a message on Aragon's machine stating that they had already started on her case and needed money. Aragon returned the call, but received no response from respondent's office.

On May 23, 2012, contrary to Aragon's instructions to Reid, respondent or his office prepared and filed a bankruptcy petition for her, listing Aragon as in pro per. It purportedly was prepared and signed by Aragon, but, in fact, her signature had been forged by respondent or one of his non-attorney staff members and did not indicate to the bankruptcy court that someone other than Aragon had signed it. The petition was filed solely for the purpose of stopping the foreclosure, not to seek a discharge of Aragon's debts. By filing the petition, respondent's firm specifically failed to follow her explicit instructions not to file a bankruptcy.

Approximately a week later, Aragon received a letter from the bankruptcy court and learned for the first time about this filing. She then went to see an attorney to evaluate her next step. He printed out the bankruptcy petition and she saw that her signature had been forged.

#### **Conclusions**

# Count 35 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence ])

By not meeting with Aragon and providing legal advice; and by not supervising his nonattorney employees and allowing them to give her legal advice, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

# Count 36 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section 2944.7 is Subject to Discipline])

By negotiating, arranging or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee for Aragon and charging \$1,250 in advanced fees prior to fully performing each and every service respondent had contracted to perform or

represented that he would perform in violation of Civil Code section 2944.7(a)(1), respondent willfully violated section 6106.3.

## Count 37 - (§ 6104 [Appearing Without Authority])

Section 6104 states, "Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension."

By filing or causing to be filed a bankruptcy petition for Aragon without her knowledge and consent, respondent corruptly or wilfully and without authority appeared as attorney for a party to an action or proceeding in willful violation of section 6104.

## *Count 38 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Aragon's signature on the bankruptcy petition without her knowledge or consent, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

# Count 39 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Respondent willfully violated section 6068, subdivision (d) by filing or allowing nonattorney employees of Realty Group or RAG to file a bankruptcy petition purportedly prepared and signed by Aragon when respondent or an employee prepared the petition and signed Aragon's name to it without indicating that someone had signed it for Aragon.

# Count 40 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

By filing or causing to be filed a bankruptcy petition for the sole purpose of stopping the foreclosure process and the sale of Aragon's home and without the intent to obtain a discharge of Aragon's debts, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just in willful violation of section 6068, subdivision (c).

### Count 41 - (§ 6068, subd. (m) [Failure to Communicate])

By not informing Aragon that he filed a bankruptcy petition on her behalf, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services.

#### **Case No. 12-O-17337 – The Turkolovs**

#### **Facts**

Annalee Turkulova and her husband, Ilya Turkulov, owned property together that they had bought in 2009. Ilya lost his job as a heavy equipment operator in the construction industry, and Annalee had medical and other problems that required her to go on disability from her job as an emergency medical technician. They had trouble making the payments on their mortgage.

In August 2012, they received a flyer from respondent's firm. On August 29, 2012, Annalee called the number on the flyer and spoke with a screener. She told the screener that they were behind on their payments and wanted a loan modification. They got an appointment to meet with Reid at Realty Group. Reid was very reassuring as to what Realty Group could do for them and Reid advised them that the company would force the lender to change the terms of the loan, even if it required a lawsuit. She printed out a foreclosure profile report and wrote what their monthly mortgage payments would be after they reduced the mortgage interest rate from 6% to either 4% or 2%. Reid advised her that the normal rate for their services was \$3,500, but that they would reduce it to \$3,000 for them.

The retainer agreement they signed on the same day, August 29, 2012, called for payments commencing on September 3, 2012 of \$1,000, followed by several \$500 payments every two weeks thereafter. After the \$3,000 was paid, they would then commence payments of \$800 per month until the matter was resolved. Respondent's signature on page 4 of the retainer agreement was a photocopy on the form they received. They never met with respondent.

The Turkolovs paid Realty Group \$1,500 in advanced attorney's before September 21, 2012.

Realty Group began working on their case and asked the Turkulovs to prepare a "hardship letter" stating why they could not continue paying the mortgage payments. Soon however, they received a letter from the lender or its agent advising them of an upcoming trustee's sale date. They reported this to Ed at Realty Group, who told them they needed to file bankruptcy. Annalee was afraid to take this step, since her parents had filed for bankruptcy and it had "haunted the family for years." He reassured them that "it would only be on paper" and they would not have to complete the process. Based on his reassurance, she agreed.

Respondent's office prepared a petition for bankruptcy and Ilya signed it in pro per. The petition falsely stated that "Debtor not represented by attorney," when, in fact, respondent's firm represented Ilya.

When the petition was prepared, the firm told Ilya that he had to file it immediately before the bankruptcy court closed, so he picked it up from respondent's office and filed it.

Respondent caused the bankruptcy petition on the Turkolovs' behalf to be filed for the sole purpose of stopping the foreclosure process and the sale of the Turkolovs' home and without the intent to obtain a discharge of debt for the Turkolovs.

The Turkulovs waited to hear from respondent as to the status of their case, but heard nothing. They tried to reach him at his office, but there was no answer. They checked online and discovered that respondent's firm had been seized by the State Bar. On September 27, 2012, when the San Bernardino Superior Court assumed jurisdiction over respondent's law practice, respondent's legal services were effectively terminated.

On October 15, 2012, the bankruptcy petition was dismissed for failure to file schedules. The home was lost to foreclosure, and the Turkulovs received an eviction notice on February 18, 2013.

At no time did respondent perform the loan modification services for which he was hired or any legal services of value for the Turkolovs. He did not earn any portion of the \$1,500 in advanced fees they paid him. Respondent also did not fully perform each and every service he had contracted to perform or represented that he would perform for the Turkolovs prior to demanding, charging, collecting or receiving the advanced attorney fees. As of the time of trial, the Turkulovs have not received a refund of the \$1,500 advance fee nor an accounting.

#### Conclusions

# Count 58 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not negotiating a loan modification or performing any legal services of value on behalf of the Turkolovs; not meeting with them or providing any legal advice; not supervising his non-attorney employees; and allowing non-attorneys to give legal advice to the Turkolovs, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

# Count Fifty-Nine - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section2944.7(a) is Subject to Discipline])

By negotiating, arranging or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee paid by the Turkolovs and collecting \$1,500 in advanced fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a)(1), respondent willfully violated section 6106.3.

### Count 60 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By not refunding any portion of the \$1,500 in unearned advanced fees paid by the Turkolovs, respondent did not refund promptly any part of an advanced, unearned fee in willful violation of rule 3-700(D)(2).

# Count 61 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By not providing the Turkolovs with an accounting of the \$1,500 in advanced fees that they paid him, respondent did not render them an appropriate accounting regarding all client funds coming into his possession.

# Count 62 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

By causing the petition to be filed with the bankruptcy court listing Ilya as representing himself and as if he had prepared it when respondent or an employee prepared it, and was representing Ilya, respondent employed, for the purposes of maintaining the causes entrusted in him, means which were inconsistent with the truth and sought to mislead the judge or judicial officer by an artifice or false statement of fact or law.

# Count 63 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

By causing the bankruptcy petition to be filed for the sole purpose of stopping the foreclosure process and the sale of the Turkolovs' home and without the intent to obtain a discharge of their debts, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just.

#### Case No. 12-O-17375 – The Schroeder Matter

#### **Facts**

Robert Schroeder lived in his Orange County home for 34 years. While he was working, he did not have serious problems making the mortgage payments. However, when he was

diagnosed with cancer and had to undergo chemotherapy, he had difficulty making the payments, and went into default. Eventually, his home was sold at a trustee's sale. After the property was sold, he received a flyer from respondent's firm advising him that it was possible that he could "reverse" the sale of the home and stay in his home long enough to get his affairs in order. On April 19, 2012, he called the number on the flyer and spoke with a non-attorney staff member at respondent's firm, who told him that they had a "foolproof plan on how to reverse" the sale and obtain a loan modification. The advice he received constituted the practice of law.

Schroeder went to respondent's office the same day and met with Reid. She told him the sale could be reversed and outlined what the payments would be in the end after the firm had negotiated the lower interest rates. This advice constituted the unauthorized practice of law.

Schroeder signed a retainer agreement that day, calling for an initial payment of \$950 due immediately, and a further fee of \$2,500, followed by an "association membership fee" of \$950 payable monthly until a case to be filed was resolved. The retainer agreement specified that the funds would not be deposited in a trust account. While he was in the office, he met very briefly with respondent, shook his hand, and spoke with him for about two minutes. Respondent did not give Schroeder legal advice during this meeting, and that was the only time that he spoke with respondent.

Schroeder made two payments of advance attorney's fees to respondent's firm, totaling \$1,900. These payments of \$950 each were made on April 19 and May 23, 2012. Both payments were made prior to respondent performing each and every service related to his loan modification.

On April 23, 2012, a UD proceeding was filed against Schroeder. On May 1, 2012, respondent or a non-attorney employee prepared and filed an answer to the UD action on Schroeder's behalf, but listed Schroeder as filing in pro per. The document purported to contain

Schroeder's signature on the answer and the verification. In fact, those signatures were both forgeries, not authorized by Schroeder. Respondent filed or caused to be filed the answer in the UD action with the court under the guise that Schroeder prepared and signed it, although respondent or an employee, in fact, did so without indicating otherwise to the court. Respondent filed or caused to be filed the answer with the court misrepresenting that Schroeder was in proper although, in reality, Schroeder had retained respondent, Realty Group or RAG.

Schroeder called respondent's office 20 to 30 times to receive status updates. Finally, later in May 2012, he received a return call from Marla. He asked that respondent represent him at an upcoming hearing in the UD. Marla became upset at Schroeder because, in her words, he was interfering in the handling of his case. Schroeder signed a substitution of attorney form on June 4, 2012, naming respondent as his attorney in the UD action.

A hearing was held on June 14. No one from respondent's office appeared to represent Schroeder, who was required to hire another attorney in the courtroom to obtain assistance in preparing a stipulation for entry of judgment in the UD. Schroeder paid this attorney \$1,000.

Schroeder requested a refund from respondent in June 2012 and effectively terminated respondent. Respondent received the refund request, but never gave Schroeder an accounting of the \$1,900 or a refund.

Schroeder did not receive a rescission of the trustee's sale or a loan modification, and respondent earned none of the fees he charged. Schroeder was evicted from his house.

#### **Conclusions**

Count 73 (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not appearing at the June 14, 2012 trial in the UD action; not performing the sale rescission and home mortgage loan modification services or any legal services of value on behalf of Schroeder; not meeting with him or providing legal advice; not supervising his non-attorney

employees; and allowing non-attorneys to give Schroeder legal advice, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

# Count 74 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section 2944.7(a) is Subject to Discipline])

By negotiating, arranging or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee for Schroeder and collecting \$1,900 in advanced fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation Civil Code section 2944.7(a)(1), respondent willfully violated section 6106.3.

# Count 75 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By not refunding any portion of the \$1,900 in unearned advanced fees paid by Schroeder, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

# Count 76 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By not providing Schroeder with an accounting of the \$1,900 in advanced fees Schroeder paid him for loan modification services, respondent did not render appropriate accounts to Schroeder regarding all client funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

# Count 77 - (§ 6068, subd. (m) [Failure to Communicate])

By not responding to Schroeder's repeated, reasonable status inquiries about a matter in which respondent had agreed to provide legal services, respondent willfully violated section 6068, subdivision (m).

# *Count 78 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Schroeder's signature on the answer in the UD action without his knowledge or consent, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

# Count 79 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

By filing or allowing non-attorney employees of Realty Group or RAG to file the answer in the UD action with the court as if Schroeder had prepared and signed it when respondent or an employee did so and did not indicate that someone had signed for Schroeder, and by misrepresenting that Schroeder was representing himself even after he had retained respondent, respondent, Realty Group, or RAG employed, for the purposes of maintaining the causes confided to him, means which were inconsistent with the truth and sought to mislead the judge or judicial officer by an artifice or false statement of fact or law.

### Case No. 12-O-17505 – The Lopez Matter

### **Facts**

Oscar and Audelia Lopez were having difficulties paying their mortgage. Their home had been in foreclosure since 2009. Oscar was a truck driver, but had a heart attack and had to stop working. Oscar is now unemployed. He does not know how to write, and only reads in Spanish and "a little in English." Audelia retired in 2007 from her job as a tax collector/supervisor. She went back to work part-time as a cooking demonstration specialist at Sam's Club, but retired from that job in 2013. They live in Murietta with their two daughters and four grandchildren.

The Lopezes received a flyer addressed to Audelia from respondent's firm, offering to reduce their monthly interest rate, payment, and principal balance. The flyer stated that the company could reduce the interest rate from an "old rate" of 8.5 % to a "new rate" of 2%. At the time they received this flyer, they were behind on their payments by several months. They called the number on the flyer and spoke with Reid.

At their February 27, 2012 appointment with Reid, they showed her all the paperwork they had accumulated. They asked if the company had a lawyer, and Reid assured them that it did. Reid also told them that the company had "saved" her house. When they asked Reid how the company could save their house, Reid stated that they first would try to talk to the lender, but if they were unable to modify the loan through that attempt, they would sue the lender. Reid did not consult with a lawyer before advising them that a lawsuit was appropriate and would be filed. In so advising them, Reid engaged in the unauthorized practice of law.

Reid proposed a \$5,000 retainer amount, payable immediately, plus a monthly fee of \$1,000. The Lopezes informed her that they did not have sufficient funds to make such a payment. Reid said that the cost could be reduced to \$3,500. This was also too high. Because they had brought several documents, Reid lowered the price again to \$2,500. They signed a retainer agreement on the same day. Shortly after signing the retainer agreement and paying an initial installment of \$250, respondent walked in the office. They spoke briefly, and then met him again as they left. They shook hands. They never discussed their case with respondent and never met him again.

The Lopezes had trouble making the \$1,000 monthly payments. They advised Amanda, their designated contact at respondent's firm, of their financial difficulties. She told them that if they missed a payment, their case would be closed.

After signing the retainer, respondent's firm prepared several documents that purported to contain the Lopez's signatures. These documents included a letter of explanation on the day-care business and their property, Request for Modification Affidavit, IRS Form 4506T-EZ, Dodd-Frank Certification, IRS 1040 signature page, letter of explanation of profit and loss, Borrower Request for HAFA Consideration, and Request for Mortgage Assistance. In fact, the Lopezes did not authorize Realty Group to sign these documents on their behalf. As such, these signatures were forged.<sup>12</sup>

A lawsuit was filed entitled *Lopez v. JP Morgan Chase Bank*, Riverside Superior Court case no. RIC1208889 on June 12, 2012. Respondent never advised the Lopezes that this case had been filed and was pending in the superior court nor did he discuss with them the available legal options regarding the litigation. Amanda asked the Lopezes to sign verifications for the lawsuit on May 31, 2012, but they were unaware that a lawsuit had been prepared until much later. When they signed the verifications, Audelia asked what they were for. Amanda replied that they were "for the file." Audelia asked to see the file, but Amanda said she could not give it to her because someone was working on it.

Like other lawsuits filed by respondent, the *Lopez v. JP Morgan Chase Bank* case had little chance of success. Again, Patrick Dunlevy provided an insightful critique of the poor quality of the complaint. He noted that, despite wanting to stop the trustee's sale in the Lopez matter, respondent did not seek injunctive relief in the form of a temporary restraining order. He also noted that there was no allegation of a breach of the covenant of good faith and fair dealing,

<sup>&</sup>lt;sup>12</sup> The retainer agreement included limited powers of attorney signed by both Oscar and Audelia. However, the powers of attorney were "to conduct and prosecute the litigation concerning the promissory Note and Deed of Trust…" The forged documents concerned prelitigation negotiations to modify the loan, which were powers not delegated to respondent under the power of attorney. Further, the forged documents did not reference the fact that they were being signed by others under a power of attorney.

which would have been appropriate in order to force a loan modification. He also noted that there were statute of limitations problems in the Business and Professions Code section 17200 claim. He commented that the Lopez action suffered the same problems as found in the Aguiniga case, of naming only the current owner of the mortgage, not the originator or servicer, when it was the originator or servicer that would have made the fraudulent statements. He also noted several other pleading problems in the slander of title and intentional infliction of emotional distress counts, where there was insufficient specificity. Finally, he noted that the count against Mortgage Electronic Registration Systems, Inc. (MERS) was improper because case law from 2010 has barred such claims.

Between February 27 and June 1, 2012, the Lopezes paid respondent \$4,505.00, most of which was borrowed from Oscar's relatives. Shortly thereafter, they could no longer pay the \$1,000 monthly payments. When they stopped paying, they received a letter from respondent dated July 19, 2012, stating that "Your file is now closed per your request." This was not true. They did not request that their file be closed. Upon sending the closing letter, respondent's legal services were effectively terminated. However, respondent did not substitute out as attorney of record for the Lopezes in the Chase litigation, (which was finally dismissed on March 4, 2013.)

On August 15, 2012, the Lopezes sent Realty Group a letter demanding an accounting and a refund, stating "This letter is to inform your company we are requesting a refund of the portion that was not used for the Lawsuit and Services rendered to us. Please give us a complete breakdown of how all the money was applied and how much money we will be getting refunded back to us." Respondent did not send a response to this letter, nor an accounting or refund.

Respondent failed to obtain a loan modification for the Lopezes. At no time did respondent perform the loan modification services for which he was hired. Respondent did not perform any legal services of value on behalf of the Lopezes nor did he earn any portion of the

\$4,505.00 in advanced fees they paid him. He did not fully perform each and every service he had contracted to perform or represented that he would perform for the Lopezes, prior to demanding, charging, collecting or receiving any fees.

The Lopezes are currently working with their lender on a modification of the loan. On March 4, 2013, the case filed by respondent was dismissed for failure to prosecute the matter, and sanctions of \$800 were assessed against the Lopezes, payable on or before March 25, 2013.

### **Conclusions**

### Count 120 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not performing mortgage loan modification services or any legal services of value on behalf of the Lopezes, not meeting with the Lopezes and providing legal advice, not supervising his non-attorney employees, and allowing non-attorneys to give legal advice to the Lopezes, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

# Count 121 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section2944.7(a) is Subject to Discipline])

By negotiating, arranging, or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee for the Lopezes and collecting \$5,500 in advanced fees prior to fully performing each and every service respondent had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a)(1), respondent wilfully violated section 6106.3(a).

### Count 122 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By not refunding any portion of the \$5,500 in unearned advanced fees paid by the Lopezes, respondent willfully violated rule 3-700(D)(2).

# Count 123 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By not providing the Lopezes with an accounting of the \$5,500 in advanced, unearned fees they paid him, respondent failed to render appropriate accounts to them regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

# Count 124 - (§ 6068, subd. (m) [Failure to Communicate])

By not notifying the Lopezes that *Lopez v. JP Morgan Chase* had been filed on their behalf, respondent did not keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of section 6068, subdivision (m).

# Count 125 - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

By withdrawing from representation without filing a substitution or moving to withdraw as attorney of record after the Lopezes advised Realty Group that they could no longer afford to make payments without advising them that *Lopez v. JP Morgan Chase* had been filed in superior court or discussing their legal options, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to the Lopezes in willful violation of rule 3-700(A)(2).

### *Count 126 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Oscar's and Audelia's signatures on documents without their knowledge or consent, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of

### Case No. 12-O-17821 – The Barr Matter

#### **Facts**

Lynn Barr lived with her husband, daughter, and two grandchildren. In May 2011, her husband experienced serious health problems, which led to his being treated in a nursing home

until his death in August 2011. As a result, she suffered serious financial problems, including difficulties making her mortgage payments.

Barr found a flyer on the gate to her house, called the number listed and spoke with a representative of Realty Law Group. On July 15, 2011, attorney Gregory Baker filed a lawsuit on her behalf against her lender, MIT Lending. (*Barr v. MIT Lending*, Riverside Superior Court, case no. RIC1111942.) This lawsuit had little or no chance of success. On August 16, 2011, the lender filed an UD action against her.

Perez contacted Barr and told her that Baker no longer worked for the company and that her file was being transferred to respondent. Perez told her she needed to sign a new fee agreement, but that all of the services previously performed by Realty Law Group would be now provided by Realty Group. Perez told her that respondent could provide services that would prevent the lender from evicting her and that Realty Group could reinstate her loan and reduce the monthly payment. By so advising her, Perez engaged in the unauthorized practice of law.

Barr signed the new retainer agreement on August 22, 2011, which called for an initial fee of \$800 and a "monthly association fee" of \$800. Barr paid respondent a total of \$6,400 in advanced attorney's fees. Respondent collected these fees prior to fully performing each and every service related to the loan modification.

Despite attempting to file a substitution of attorney form at least twice, respondent never successfully did so in *Barr v. MIT*. On December 2, 2011, defendants filed a motion to dismiss *Barr v. MIT*. On December 28, 2011, Barr's former counsel sent respondent a letter about upcoming hearings related to *Barr v. MIT* and regarding the filing of the substitution of attorney. Respondent received the letter but did not make any further effort to substitute into the case. On January 5, 2012, Barr was served with a notice to vacate her property by January 18, 2012.

On January 17, 2012, respondent filed or allowed non-attorney employees of Realty Group or RAG to file a bankruptcy petition for Barr in pro per with the bankruptcy court in Riverside. It purported to contain Barr's signature, but she neither prepared nor signed the bankruptcy petition. Barr had no knowledge that someone had signed her name to the petition, nor did she authorize anyone to do so. Respondent forged or allowed non-attorney employees of Realty Group or RAG to forge Barr's signature on the bankruptcy petition and all related filings. He did not notify her that a bankruptcy petition had been filed for her.

Respondent filed or allowed non-attorney employees of Realty Group or RAG to file the bankruptcy petition for the sole purpose of stopping the foreclosure process and the sale of Barr's home and without the intent to obtain a discharge of debt for Barr.

On January 24, 2012, the court granted the Trustee's December 2, 2011 motion to dismiss in *Barr v. MIT*.

Because the proper schedules had not been filed, the bankruptcy court considered dismissing the petition. On January 25, 2012, the Trustee filed a Motion to Extend Deadline to File Schedules or Provide Required Information. The Trustee believed that Barr's case should not be dismissed for her failure to file the schedules, because he had discovered that she appeared to own substantial assets, specifically a Wells Fargo account which contained \$208,902.18. These funds were her father's, held jointly with Barr for convenience to allow Barr to manage her father's bill. She was not an owner of the account.

On January 31, 2012, respondent filed or allowed non-attorney employees of Realty Group or RAG to file a motion to extend for Barr in pro per advising the court that she needed to retain an attorney. He did not notify her that a motion to extend had been filed in her name. In fact, Barr was being represented by respondent's firm despite the indication on the pleading that she was in pro per. The motion purported to contain Barr's signature but she neither prepared

nor signed it. She did not know that someone had signed her name on the motion nor did she authorize anyone to do so. Respondent forged or allowed non-attorney employees of Realty Group or RAG to forge Barr's signature on the motion to extend.

On January 31, 2012, the court granted the Trustee's motion to extend and ordered Barr to file all of her remaining schedules and appear for her section 341(a) meeting of creditors on February 24, 2012. On January 31, 2012, the Trustee seized Barr's father's bank account. In February 2012, after discovering that the funds in her father's bank account were seized, Barr contacted Trustee Todd A. Frealy who told her that she did not disclose the account in her January 17, 2012 bankruptcy petition.

In February 2012, Barr called Realty Group seeking legal advice on how to handle the return of her father's funds. Perez advised Barr not to communicate or cooperate with Frealy. By doing so, Perez gave Barr legal advice. <sup>13</sup>

Neither respondent's firm nor Barr appeared at the February 24, 2012, section 341(a) meeting of creditors. It was continued to May 15, 2012. Respondent's firm was aware of the meeting, since Barr gave all the bankruptcy court notices she received to Realty Group.

On March 9, 2012, the Trustee filed a Motion for Issuance of an OSC Re Contempt Against Debtor Lynn Barr for Refusing to Comply with the Court's Order Directing the Debtor to File her Schedules and Appear for Her 341(a) Meeting of Creditors (motion for OSC).

On March 14, 2012, Barr was evicted from her home.

On March 20, 2012, the court granted the motion for OSC and set a hearing for April 5, 2012. Respondent received notice.

<sup>&</sup>lt;sup>13</sup> On the proofs of service for several of the filings made by the attorney for the Trustee, Marla Perez is listed as "Counsel for Debtor."

On March 21, 2012, respondent's firm filed a motion to withdraw or dismiss the bankruptcy petition, listing Barr in pro per. It purported to contain Barr's signature, but she neither prepared nor signed it. Barr did not know that someone had signed her name to the motion to withdraw, nor did she authorize anyone to do so. Respondent forged or allowed non-attorney employees of Realty Group or RAG to forge Barr's signature on the motion to withdraw. Respondent did not notify Barr that a motion to withdraw had been filed in her name.

On April 5, 2012, Barr appeared at the motion for the OSC. On May 10, 2012, Barr appeared at the section 341(a) hearing. On July 23, 2012, Barr reached an agreement with the Trustee to return most of her father's funds. However, the Trustee was awarded \$21,115.36 in fees and costs, which was deducted from the funds in Barr's father's bank account. Barr's bankruptcy petition was subsequently dismissed but the court retained jurisdiction to conduct a hearing on an OSC re disgorging fees.

On August 14, 2012, the court issued an OSC regarding why respondent should not disgorge fees and/or be fined for violation of 11. U.S.C. section 329 based on respondent's failure to disclose Realty Group as the preparer of Barr's bankruptcy petition. On April 29, 2013, respondent stipulated to disgorge \$5,000 in fees to Barr.

On September 27, 2012, when the superior court assumed jurisdiction over respondent's law practice, respondent's legal services were effectively terminated.

At no time did respondent perform the loan modification services for which he was hired. Respondent did not perform any legal services of value on behalf of Barr. Respondent did not earn any portion of the \$6,400 in advanced fees paid by Barr. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Barr, prior to demanding, charging, collecting or receiving the advanced attorney fees.

Respondent has not refunded any portion of the unearned fees to Barr nor has he provided her with an accounting of the \$6,400 advanced fees paid.

#### Conclusions

# Count 146 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not performing mortgage loan modification services or any legal services of value on behalf of Barr; not meeting with Barr or providing legal advice; not supervising his non-attorney employees and allowing them to give Barr legal advice; not filing a response to the UD action or a substitution in *Barr v. MIT*; and not taking any action on Barr's behalf in that matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

# Count 147 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section 2944.7(a) is Subject to Discipline])

By negotiating, arranging or offering to perform a home mortgage loan modification or other form mortgage loan forbearance for a fee for Barr and collecting \$6,400 in advanced fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a)(1), respondent willfully violated section 6106.3.

### Count 148 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By failing to refund any portion of the \$6,400 in unearned advanced attorney's fees paid by Barr, respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

# Count 149 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By not providing Barr with an accounting of the \$6,400 in advanced fees that she paid him, respondent did not render appropriate accounts to a client regarding all client funds coming into his possession in willful violation of rule 4-100(B)(3).

# Count 150 - (§ 6068, subd. (m) [Failure to Communicate])

By not notifying Barr that a bankruptcy petition, a motion to extend and a motion to withdraw had been filed on her behalf, respondent did not keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services in willful violation of section 6068, subdivision (m).

# *Count 151 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Barr's signature on a bankruptcy petition and all related filings, a motion to extend, and a motion to withdraw without Barr's knowledge or consent, respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

# Counts 152 and 153 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Respondent employed, for the purposes of maintaining the causes confided to him, means which were inconsistent with the truth and sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in willful violation of section 6068, subdivision (d) by filing or allowing non-attorney employees of Realty Group or RAG to file the bankruptcy petition, a motion to extend, and a motion to withdraw as if they were prepared and signed by Barr when respondent or an employee forged her signature to those documents, and misrepresenting that Barr represented herself.

However, there is not clear and convincing evidence that respondent submitted or allowed non-attorney employees of Realty Group or RAG to submit two substitutions to the superior court misrepresenting that Barr signed those documents because Barr could not confidently identify whether these documents contained her signature. Therefore, Count 153 is dismissed with prejudice.

# Count 154 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

By filing or allowing non-attorney employees of Realty Group or RAG to file Barr's bankruptcy petition for the sole purpose of stopping the foreclosure process and the sale of her home and without the intent to obtain a discharge of her debts, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just in willful violation of section 6068, subdivision (c).

### Case No. 12-O-17932 – The Pineda Matter

#### **Facts**

Maria and Arturo Pineda live in Lynwood, California. Arturo became ill with diabetes and had surgery to remove a tumor in his head. He had to reduce his hours at work, and eventually ceased working. Maria takes care of him. After Arturo's surgery, they began having problems making their mortgage payments. Neither Maria nor Arturo speaks English.

In November 2011, they received a flyer at their house, called the number listed, and met with a staff member named Jose at respondent's firm. At this first meeting on November 25, 2011, Reid was also present. Respondent was not present, and Maria and Arturo have never met him. They communicated with respondent's firm through an interpreter who worked for him. Reid told the Pinedas that the firm would save their house and could reduce their monthly mortgage payment from \$1,748 to \$1,000. She also described the services the firm could

provide that were appropriate for their specific legal problem. In giving this advice, Reid engaged in the unauthorized practice of law.

Maria and Arturo filled out and signed papers on November 25, 2011, including a retainer agreement. The agreement called for an initial immediate payment of \$3,000, followed by monthly "association membership fee" of \$1,000. Throughout the period that respondent represented them, they paid a total of \$12,000 in advance attorney's fees.

On November 28, 2011, respondent filed or allowed non-attorney employees to file a bankruptcy petition for Arturo in pro per. It purported to contain Arturo's signature, but he neither prepared nor signed it. Arturo had no knowledge that someone had signed his name to the petition, nor did he authorize anyone to do so. Respondent forged or allowed non-attorney employees of Realty Group or RAG to forge Arturo's signature on the bankruptcy petition and all related filings. Respondent did not notify him that a bankruptcy petition had been filed for him.

On December 12, 2011, Arturo purportedly filed, in pro per, a request for an extension of time to file further documents. In fact, Arturo was not aware of this document because respondent's firm filed it without his knowledge. One of the stated reasons for the extension was "to allow me time to obtain an attorney to properly complete my paperwork," a false statement by respondent's firm, since it had already been retained to represent Arturo, and had, in fact, prepared his initial petition and the petition for extension. On December 16, 2011, the court denied the petition for extension. On December 29, 2012, the bankruptcy petition was dismissed.

In July 2012, respondent prepared a bankruptcy petition for Maria in pro per. Maria filed this petition, but, on August 1, 2012, it too, was dismissed.

In August 2012, respondent's firm sent a bankruptcy petition for Maria to sign in pro per. She filed it on August 29, 2012, without the schedules necessary to obtain a discharge and without identifying RAG as ordered by the bankruptcy court on July 12, 2012. Respondent prepared Maria's petitions solely for the purpose of stopping the foreclosure sale, not to obtain a discharge of Pineda's debt.

On September 7, 2012, respondent filed a lawsuit against the lender on behalf of the Pinedas. (*Arturo Pineda and Maria Pineda v. Wells Fargo BK NA, NDEX West LLC, et al.*, Los Angeles County Superior Court case number TC026820.) This lawsuit, like the others filed in other client's cases, was largely boilerplate, and had little or no chance of success.

Patrick Dunlevy also testified about the poor quality of the Pinedas' lawsuit. He noted that no TRO had been requested. Further, respondent again failed to allege claims properly against the originator or servicer of the loan, and instead alleged them against the current owner of the loan. Even had he correctly alleged these charges, all of the claims against the originator and the servicer would have further been barred by the statute of limitation. Mr. Dunlevy also noted the same problems with the slander of title and emotional distress counts as existed in the Lopez and Aguiniga matters, above. Finally, the complaint alleges wrongful foreclosure, when no foreclosure had occurred.

Respondent did not obtain the requested loan modification for the Pinedas. Respondent has not refunded any of the unearned fees, nor has respondent provided to the Pinedas an accounting of the \$12,000 in advance fees paid

In August 2012, Realty Group sent another prepared bankruptcy petition, by facsimile, to Maria for filing with the bankruptcy court. Respondent did not identify Realty Group or RAG on the bankruptcy petition as required by the July 12, 2012 Santa Ann bankruptcy court order. As instructed by Realty Group, on or about August 29, 2012, Maria filed the second bankruptcy

petition as debtor in pro per with the U.S. Bankruptcy Court in Los Angeles. As with the first petition, respondent's firm misrepresented that Maria was in pro per, when in fact, it represented Maria.

On September 19, 2012, the bankruptcy petition was dismissed for failure to file schedules.

On September 27, 2012, the State Bar assumed jurisdiction over respondent's law practice.

#### Conclusions

# Count 155 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not performing mortgage loan modification services or any legal services of value for the Pinedas; not meeting with them or providing legal advice; not supervising his non-attorney employee; and allowing them to give the Pinedas legal advice, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

# Count 156 - (§ 6106.3(a) [Provides That an Attorney Who Engages in Conduct in Violation of Civil Code Section 2944.7(a) is Subject to Discipline])

By negotiating, arranging, or offering to perform a home mortgage loan modification or other form of mortgage loan forbearance for a fee for the Pinedas and collecting \$12,000 in advanced fees prior to fully performing each and every service respondent had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7(a)(1), respondent wilfully violated section 6106.3(a).

# Count 157 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By not refunding any portion of the \$12,000 in unearned advanced fees the Pinedas paid him, respondent willfully violated rule 3-700(D)(2).

# Count 158 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By not providing the Pinedas with an accounting of the \$12,000 in advanced fees that they paid him, respondent failed to render appropriate accounts to them regarding all of their funds coming into his possession.

# *Count 159 - (§ 6106 [Moral Turpitude])*

By forging or allowing non-attorney employees of Realty Group or RAG to forge Arturo's signature on the bankruptcy petition and all related filings without his knowledge or consent, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

# Counts 160 and 161- (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Respondent employed, for the purposes of maintaining the causes confided to him, means which were inconsistent with the truth and sought to mislead the judge or judicial officer by an artifice or false statement of fact or law judge or judicial officer by an artifice or false statement of fact or law in willful violation of section 6068, subdivision (d) by: (1) filing or allowing non-attorney employees of Realty Group or RAG to file Arturo's bankruptcy petition and all related filings misrepresenting that he prepared and signed it when respondent or an employee prepared it and forged his signature on it and did not indicate to the court that someone had signed for Arturo, and misrepresenting that Arturo represented himself; and (2) misrepresenting in Maria's bankruptcy petitions and all related filings that she represented herself and that she prepared them when respondent prepared or caused them to be prepared.

# Counts 162 and 163 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

By filing or allowing non-attorney employees of Realty Group or RAG to file a bankruptcy petition for the sole purpose of stopping the foreclosure process and the sale of the

Pinedas' home and without the intent to obtain a discharge of Arturo's and Maria's debts, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just in willful violation of section 6068, subdivision (c).

# Count 164 - (§ 6103 [Failure to Obey a Court Order])

By not identifying RAG on Maria's August 29, 2012 bankruptcy filing, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear in willful violation of section 6103.

# Case Nos. 12-O-12667, 12-O-16925, 12-O-17337, 12-O-17505, 12-O-17821, 12-O-17932 Facts

Between August 2011 and September 27, 2012, respondent allowed non-attorneys, including but not limited to Denno, Reid, and Perez to meet with the clients in the Aguiniga, Aragon, Turkolov, Lopez, Barr and Pineda matters, enter into retainer agreements with them and give them legal advice about loan modifications and other strategies to save their homes from foreclosure or rescind the foreclosure sale of their home.

#### **Conclusions**

# Count 165 - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law.

By allowing non-attorneys, including but not limited to, Denno, Reid, and Perez to enter into retainer agreements with clients in the Aguiniga, Aragon, Turkolov, Lopez, Barr and Pineda matters and give them legal advice about loan modifications and other strategies to save their homes from foreclosure or rescind the foreclosure sale of their home, respondent aided persons or entities in the unauthorized practice of law.

# Aggravation<sup>14</sup>

Multiple Acts (Std. 1.5(b).)
Pattern of Misconduct (Std. 1.5(c).)

From when he formed a partnership with Denno in August 2011 until his practice was taken over pursuant to a superior court order on September 27, 2012, respondent's misconduct followed a pattern of willfully misleading clients and the bankruptcy courts. In particular, this court is concerned about the repeated artifice erected by respondent and his firm in intentionally preparing his clients' bankruptcy petitions in pro per, in order to justify a later continuance "in order to retain counsel." Respondent further misused the bankruptcy process in that in none of the bankruptcies in this matter did respondent intend to obtain a discharge for his clients. He engaged in acts of moral turpitude as well.

Respondent also engaged in other patterns of misconduct regarding the clients whose cases were tried in this court, including not performing competently or communicating with them (six and seven counts, respectively); not accounting for their funds or returning their unearned fees (six counts each); and not complying with statutes regarding fees for performance of loan modification services (seven counts).

Respondent has engaged in a "serious pattern of misconduct involving recurring types of wrongdoing." (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711.) "[W]hen an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing ... the gravity of each successive violation increases. [Citation.]" (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 (dis. opn. of Obrien, J.).) These patterns of misconduct are a very significant factor in aggravation as they demonstrate respondent's repeated, complete disregard for his ethical responsibilities toward his clients and the administration of justice over an

<sup>&</sup>lt;sup>14</sup> All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

extended period of time.

As to the balance of the charges of which he was found culpable, respondent engaged in multiple acts of misconduct.

The court further finds, regardless of the aforementioned patterns, that the totality of respondent's misconduct evidences a habitual disregard of his clients' interests.

Intentional Misconduct, Bad Faith, Concealment, Dishonesty, Overreaching or Other Uncharged Violations of the Business and Professions Code/Rules of Professional Conduct (Std. 1.5(d).)

Respondent's misconduct was intentional, dishonest and contained another uncharged violation of the ethics rules, in that he made misrepresentations in his declaration filed in support of his opposition to the OSC in Riverside, claiming he performed work in the civil litigation in the Barr case, when in fact, he never substituted into the case.

This is a significant aggravating factor.

# Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent's misconduct resulted in harm to clients and the administration of justice, in that (1) Schroeder had to retain other counsel in court on the day of his UD hearing because respondent did not appear and he incurred an additional \$1,000.00 in attorney fees to do so; (2) the Lopezes borrowed most of the money they paid to respondent from Oscar's relatives, and they were also sanctioned \$800 when the Chase litigation was dismissed for lack of prosecution; and (3) respondent filed meritless bankruptcy petitions and lawsuits, which impacted the courts and even required the bankruptcy judges to specifically issue orders restricting the manner in which he could file future petitions.

While there was cognizable harm to clients because of respondent's acts and the taking of money he was not entitled to, the court is not attributing to respondent the harm that arose solely from the clients' poor financial conditions.

# **Indifference Toward Rectification/Atonement (Std. 1.5(g).) Restitution (Std. 1.5(i).)**

Respondent has been found culpable of not returning unearned fees to clients in the Aguiniga, Turkolov, Schroeder, Lopez, Barr and Pineda matters. These clients were in delicate, if not desperate, financial stituations. Further, respondent had several opportunities to reprimand or terminate key employees he claims were acting beyond their authority, but he did not do so.

# Mitigation

# No Prior Record (Std. 1.6(a).)

Respondent had approximately 17 years of discipline-free practice at the time the misconduct commenced in August 2011.

# **Cooperation to Victims/State Bar (Std. 1.6(e).)**

Although respondent entered into a partial stipulation of facts in this matter, the stipulated facts were minimal and were easily proven. Accordingly, only some mitigating weight is afforded this factor.

### Good Character (Std. 1.6(f).)

Respondent produced minimal evidence of his good character from Kenneth Crede. Mr. Crede has been an attorney for 23 years and has known respondent since 1995-96. He has worked with him on cases, and feels he is very competent, honest, and insightful in his practice. However, Mr. Crede had not read the NDC or the response, and only knew that charges had been brought against him by the State Bar. Further, this testimony does not represent a cross-section of the legal and general communities. Therefore, the court attributes no mitigation to respondent's character evidence.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.2(b), 2.5, 2.7, 2.8(a), 2.14 and 2.15 apply in this matter, allowing a range of disciplinary recommendations from reproval to disbarment. The most severe sanction, disbarment, is found at standards 2.5(a), 2.8(a), and 2.14.

Standard 2.5(a) provides that disbarment is appropriate for failing to perform legal services, demonstrating a pattern of misconduct.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) - (h).

Standard 2.14 provides that disbarment or suspension is appropriate for any violation of a provision of Article 6 of the Business and Professions Code, not specified in these standards.

Article 6 includes section 6106.3(a).

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety.

(In re Silverton (2005) 36 Cal.4th 81, 91, 92; In re Naney (1990) 51 Cal.3d 186, 190; std. 1.1.)

Although the standards are not mandatory, they may only be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; std. 1.1.)

This portion of the case that was tried involved eight cases and 68 counts of misconduct. Of these, respondent was found culpable of 66 counts, including engaging in acts of moral turpitude; not complying with statutes regarding fee arrangements in loan modification matters; not performing or communicating with clients; not accounting to them for their fees; not returning to them the fees he had not earned; misleading the bankruptcy courts; and aiding in the unauthorized practice of law, among other things. In mitigation, the court considered respondent's 17 years of practice without prior discipline and gave some mitigating weight to his entering into a partial stipulation of facts. Aggravating factors included patterns and multiple acts of misconduct; intentional or dishonest uncharged misconduct; harm to clients and to the administration of justice; and indifference toward rectification or atonement.

The State Bar seeks respondent's disbarment. Respondent believes that two years' actual suspension, with credit for the period of inactive enrollment, is sufficient. Having considered the misconduct, the aggravating and mitigating factors, the standards and other law, the court finds that, regardless of whether a pattern of misconduct is found, disbarment is the only means to protect the public from respondent's habitual and complete disregard of his ethical duties.

Cases involving a pattern of misconduct similar to respondent's where the attorney has no prior record of discipline, generally result in the attorney's disbarment. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 ["panoply" of misconduct affecting more than 20 clients over a 10-year period; disbarment]; *In the Matter of Collins* 

(Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not imposed for a pattern of misconduct similar to respondent's, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar*, 49 Cal. 3d 753 (1989) 49. Cal.3d 753 [Although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself, and his concurrent family problems]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [Ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, attorney was experiencing severe financial and emotional problems during period of misconduct, and attorney thereafter substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [Disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].)

The Review Department has also found that "cases involving extensive misconduct 'in which the attorney had no prior discipline and in which intentionally dishonest acts, such as misrepresentations and misappropriation of client funds, were not the essence of the disciplinary charges, suspension has generally been deemed adequate only where the attorney presented evidence of a tragic event or set of circumstances which altered and explained the attorney's conduct, as well as sufficient evidence of rehabilitation to give the court confidence that the misconduct would not be repeated. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 347, citing *In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 687.)

Other than a lengthy period of discipline-free practice, which merits substantial weight in mitigation, the present case exhibits significant patterns of misconduct. It is devoid of compelling mitigation justifying a finding of respondent's rehabilitation that would instill sufficient confidence for this court to find that the misconduct would not reoccur. Accordingly, the court cannot make a discipline recommendation short of disbarment.

The court has also found that, regardless of any pattern of misconduct, respondent habitually disregarded his clients' interests, which has long been regarded as a ground for disbarment. (See, e.g., *Grove v. State Bar* (1965) 66 Cal.2d 680, 683-684; *Ridley v. State Bar* (1972) 6 Cal.3d 551, 560-561; *In the Matter of Collins, supra*, 2 Cal. State Bar Ct. Rptr. at p. 15.) In *McMorris v. State Bar* (1983) 35 Cal.3d 77, the attorney was disbarred for habitually disregarding his clients' interests. The Supreme Court noted: "'As we have repeatedly stated, willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]' (Citation omitted.) Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude justifying disbarment. (Citations omitted.)'" (*Id.* at p. 85.) On this basis, too, respondent's disbarment must be recommended.

The court also found instructive *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 and *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In *Jones*, the attorney was relatively inexperienced and had been admitted about two years when his misconduct began. Respondent Jones was a full-time associate at a law firm. At the same time and for a two-year period, he entered into an agreement with a non-lawyer to establish a law corporation and to split fees. The non-lawyer handled all aspects of the personal

injury practice without appropriate supervision. The non-lawyer used illegal means to solicit clients and, without respondent's knowledge, practiced law, collected over \$600,000 in attorney fees although no attorney had performed services and misused nearly \$60,000 in settlement funds withheld to pay medical providers, all in respondent's name. Respondent did not take realistic action to stop these practices even after receiving reliable information that they were occurring. Respondent eventually reported the non-lawyer to the police, turned himself in to the State Bar and cooperated fully in the prosecution of his discipline case as well as the criminal case against the non-lawyer. Mitigating factors included substantial, spontaneous candor and cooperation, good character, community activities and paying \$57,000 from his own funds to lienholders unpaid by the non-lawyer.

The Review Department suspended the attorney for three years, stayed, placed him on a three-year probation and actually suspended him for two years and until he complied with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, for abdicating "basic professional responsibilities and allow[ing] a non-lawyer almost free rein to perform such responsibilities in the lawyer's name." (*Id.* at p. 415.) *Jones* involved more mitigation than the present case including his substantial, spontaneous candor and cooperation, and restitution. As a result, respondent in this matter should receive greater discipline than the two-year actual suspension in *Jones*.

In *Valinoti*, the attorney was suspended for five years, stayed, and placed on probation for five years with an actual suspension of three years for 18 counts of misconduct in nine immigration client matters. Even though he had no prior record, his misconduct occurred shortly after being admitted to the practice of law and was excessive and repeated during a period of

more than two years.<sup>15</sup> It included the failure to perform, client abandonments, acts of moral turpitude, aiding and abetting non-attorneys in the unauthorized practice of law, failure to properly manage his office, misrepresentations to the State Bar, and lack of remorse.

Respondent herein should receive greater discipline than the three-year actual suspension imposed in *Valinoti*, as this case presents greater misconduct.

Respondent has demonstrated a profound lack of understanding of his ethical duties to his clients and to the courts. He undertook a continued course of repeated violations of his professional obligations to the detriment of his clients and the courts involved which, this court believes, rose to the level of a "serious pattern of misconduct involving recurring types of wrongdoing" (*Garlow v. State Bar, supra,* 44 Cal.3d at p. 711.) Regardless of a finding of pattern, respondent' misconduct was, at minimum, a habitual, complete disregard of his clients' interests. His complete abdication to non-lawyers of the duties he owed to his clients has caused significant harm to those vulnerable, desperate individuals, the public and the administration of justice. The serious nature of the misconduct and aggravating factors as well as the absence of compelling mitigation suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. This court is "constrained to observe [its] responsibility to preserve confidence in the legal

<sup>15</sup> The majority in *Valinoti* questioned whether a two and one-half year period of misconduct was sufficient to represent a pattern, referring to it as "a close question." (But see the dissent by Obrien, J., finding a pattern and recommending disbarment. Also see *Lebbos v. State Bar* (1991) 53 Cal.3d 37 [multiple acts involving moral turpitude and dishonesty and pattern of serious recurring misconduct; no prior discipline; disbarment]; *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 43-44 [pattern of serious misconduct in falsely accusing parties, counsel, clients and judges over a substantial period of time from the end of 1993 to August 1995; no prior discipline; disbarment]; *In the Matter of Collins, supra*, 2 Cal. State Bar Ct. Rptr. 1 [six-year pattern of client abandonment and failed to refund over \$17,500 in unearned fees and costs in 14 client matters; disbarment].) Nevertheless, the majority in *Valinoti* noted as follows: "Regardless of whether respondent's misconduct spanned the requisite 'extended period of time,' at the very least, his misconduct demonstrates repeated, similar acts of misconduct which we must consider to be serious aggravation." (*Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. at p. 555.)

profession and maintain the highest possible professional standards for attorneys." (*Porter v. State Bar* (1990) 52 Cal.3d 518, 528.) Accordingly, the court recommends disbarment, among other things, as the only means to protect the public, courts and the legal profession from further misconduct by respondent.

### Recommendations

It is recommended that respondent Gary David Tracy, State Bar Number 167212, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

#### Restitution

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

- 1. to Carlos and Diega Aguiniga in the amount of \$4,000.00 plus 10% interest per annum from March 16, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Carlos and Diega Aguiniga, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
- 2. to Ilya and Annalee Turkolov in the amount of \$1,500.00 plus 10% interest per annum from September 21, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Ilya and Annalee Turkolov, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
- 3. to Robert Schroeder in the amount of \$1,900.00 plus 10% interest per annum from May 23, 2012 (or to the Client Security Fund to the extent of any payment from the fund to

Robert Schroeder, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

- 4. to Oscar and Audelia Lopez in the amount of \$4,505.00 plus 10% interest per annum from June 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Oscar and Audelia Lopez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
- 5. to Lynn Barr in the amount of \$6,400.00 plus 10% interest per annum from April 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Lynn Barr, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
- 6. to Arturo and Maria Pineda in the amount of \$12,000.00 plus 10% interest per annum from September 12, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Arturo and Maria Pineda, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

#### Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

# **Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August \_\_\_\_\_, 2014 RICHARD A. HONN
Judge of the State Bar Court